

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ARTHUR WHITE

PLAINTIFF

VS.

CIVIL ACTION NO. 3:05CV407 DPJ-JCS

CHRISTOPHER EPPS AND
EMITT SPARKMAN

DEFENDANTS

ORDER

This cause came on this date to be heard upon the Report and Recommendation of the United States Magistrate Judge, after referral of hearing by this Court, and the Court, having fully reviewed the Report and Recommendation of the United States Magistrate Judge entered in this cause, having received no objections, and being otherwise duly advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of United States Magistrate Judge James C. Sumner be, and the same is hereby, adopted as the finding of this Court, and the Defendants' motion to dismiss should be denied.¹

¹ In response to the motion to dismiss, Plaintiff filed a "motion to strike answer/alternative motion for judgment by default and response to motion to dismiss." It appears from the docket that summons was originally issued on February 16, 2006. On July 7, 2006, Judge Sumner, presuming that the summons had been misplaced, ordered re-issue of summons. On July 12, 2006, the clerk's office docketed the U.S. Marshal's "Process Receipt and Return" for both Defendants, reflecting that the original summonses were served on May 17, 2006. Later, on October 20, 2006, the clerk's office docketed the second U.S. Marshal's "Process Receipt and Return," this time attached to Defendants' "Notice and Acknowledgment of Receipt of Summons and Complaint by Mail" reflecting that the second summonses were served on August 7, 2006. Defendants answered Plaintiff's complaint on August 25, 2006. Plaintiff contends that based on the service date of the first summonses, Defendants' answer is untimely. However, because of the irregularities during service of summons, Plaintiff's motion to strike answer/alternative motion for default is denied.

SO ORDERED AND ADJUDGED this the 22th day of February, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE